

MELINDA HAAG (CSBN 132612)
United States Attorney
JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
JAMES A. SCHARF (CSBN 152171)
Assistant United States Attorney

150 Almaden Boulevard, Suite 900
San Jose, CA 95113
Telephone: (408) 535-5044
FAX: (408) 535-5081
James.Scharf@usdoj.gov

Attorneys for Defendant United States Department of Education¹

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RANDY CHAPEL,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF EDUCATION,

Defendant.

CASE NO. CV 11-04344 PSG

CAROL NYE-WILSON,
DALE WILSON

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF EDUCATION,

Defendant.

CASE NO. CV 11-05678 HRL

**ADMINISTRATION MOTIONS TO
CONSIDER WHETHER CASES
SHOULD BE RELATED AND TO
EXTEND TIME TO RESPOND TO
COMPLAINT; SUPPORTING
DECLARATION; ~~PROPOSED~~
ORDER**

PLEASE TAKE NOTICE that, pursuant to Civil L. R. 3-12 and Civil L. R. 7-11,
Defendant United States Department of Education hereby moves the Court for an order finding

¹Counsel for the defendant in Case No. CV 11-05678 HRL specially appears for the
purposes of this motion only.

1 that the above-referenced cases are related.

2 These FOIA actions should be related because the actions concern substantially similar
3 FOIA requests. Litigating these cases before different judges would not be an efficient use of the
4 Court's resources and could result in inconsistent judgments. *See* Civil L.R. 3-12(a).
5 Accordingly, defendant requests that these cases be found to be related and that the later-filed
6 case, CV 11-05678 HRL, be reassigned to Magistrate Judge Grewal for future her handling.
7 Plaintiffs in both cases have consented in writing to having Magistrate Judge Grewal handle both
8 cases.

9 In addition, defendant hereby moves the Court for an order extending the time for
10 defendant to respond to the complaint in CV 11-05678 HRL, which is now due on January 3,
11 2012. Defendant intends to respond to plaintiffs' outstanding FOIA requests on or about
12 December 23, 2011. Defendant's response to the complaint in CV 11-05678 HRL is currently
13 due January 3, 2012. As it did in CV 11-04344, defendant intends to file a motion to dismiss
14 rather than an answer on the grounds that the lawsuit is moot. However, in order prepare that
15 motion, defendant would like to receive the Court's anticipated order on defendant's motion to
16 dismiss in CV 11-04344 PSG as said order may address the reasonableness of defendant's search
17 efforts and thus affect defendant's arguments.

18 In addition, defense counsel AUSA James A. Scharf will be on vacation during the week
19 of December 26, 2011 and agency counsel Jill Siegelbaum will be out of the office from
20 December 23 through December 29, 2011. Because of their unavailability during this period of
21 time, it will be very difficult for defendant to file a motion on January 3, 2012.

22 In addition, the requested extension would afford the parties additional time to meet and
23 confer regarding the sufficiency of December 23, 2011 response to plaintiffs' outstanding FOIA
24 requests prior to filing its motion.

25 Accordingly, defendant requests that the Court issue an order requiring defendant to
26 respond to plaintiffs' complaint in CV 11-05678 HRL within 30 days of the filing of its order on
27 defendant's motion to dismiss in CV 11-04344 PSG. Alternatively, defendant requests that the
28 Court grant defendant an additional thirty days to respond to the complaint to and including

February 2, 2012.

Dated: December 16, 2011

Respectfully submitted,

MELINDA HAAG
United States Attorney

/S/
James A. Scharf
Assistant United States Attorney

DECLARATION OF JAMES A. SCHARF

I, James A. Scharf, declare as follows:

1. I am an attorney in good standing with the bar of this Court. I represent defendant United States Department of Education in CV 11-04344 PSG and currently expect to represent defendant United States Department of Education in CV 11-05678 HRL. This declaration is made in support of the Administrative Motions to Determine Whether Cases Should Be Related in accordance with Civil Local Rule 3-12 and Civil Local Rule 7-11 and to Extend Time to Respond to Complaint.

2. The matters stated in this declaration are true of my own personal knowledge and/or review of my files and, if necessary, I could and would competently testify to them.

3. Both CV 11-04344 PSG and CV 11-05678 HRL are FOIA lawsuits based on substantially similar FOIA requests. Further, Ms. Nye-Wilson is Randy Chapel's mother and it appears that Mr. Chapel is helping Ms. Nye-Wilson and Dale Wilson make FOIA requests and litigate their action. Accordingly, defendant requests an order finding these cases related and transferring the later-filed action to Magistrate Judge Grewal. Plaintiffs in both cases have consented in writing to having Magistrate Judge Grewal handle both cases.

4. Defendant intends to respond to Ms. Nye-Wilson's and Dale Wilson's outstanding FOIA requests on or about December 23, 2011. Defendant's response to their complaint is currently due January 3, 2012. As it did in CV 11-04344 PSG, defendant intends to file a motion to dismiss on the grounds that their lawsuit is moot. However, in order to prepare that motion, defendant would like to receive the Court's anticipated order on defendant's motion to dismiss in

1 CV 11-04344 (heard December 6, 2011) as said order may address the reasonableness of
2 defendant's document search efforts and thus affect defendant's arguments.

3 5. In addition, defense counsel AUSA James A. Scharf will be on vacation during
4 the week of December 26, 2011 and agency counsel Jill Siegelbaum will be out of the office
5 from December 23 through December 29, 2011. Because of their unavailability during this
6 period of time, it will be very difficult for defendant to file a motion on January 3, 2012.

7 6. Granting this request would also afford the parties additional time to meet and confer
8 about the sufficiency of defendant's anticipated December 23, 2011 response to plaintiffs'
9 outstanding FOIA requests.

10 7. Accordingly, defendant requests that the Court issue an Order requiring defendant to
11 respond to plaintiffs' complaint in CV 11-05678 HRL within 30 days of the filing of its order on
12 defendant's motion to dismiss in CV 11-04344 PSG. Alternatively, defendant requests that the
13 Court extend the time to respond to the complaint by 30 days to and including February 2, 2012.

14 8. By e-mail sent December 14, 2011, I asked Randy Chapel and Carol Nye-Wilson
15 whether they objected to the relief requested by these administrative motions. All of the
16 plaintiffs replied that they consented to having both cases handled by Magistrate Judge Grewal.
17 As of this filing, plaintiffs Carol Nye-Wilson and Dale Wilson have not yet advised defendant
18 whether or not they object to the requested extension of time to respond to their complaint.

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed on December 16, 2011, at San Jose, California.

21
22 /S/
James A. Scharf

~~PROPOSED~~ ORDER

An Administrative Motion to Consider Whether Cases Should Be Related has been filed stating that the following cases are related within the meaning of Civil L.R. 3-12: Chapel v. United States Department of Education, CV 11-04344 PSG and Nye-Wilson, et al., v. United States Department of Education, CV 11-05678 HRL.

On the basis of the material submitted to the Court and the Court's own files in the two cases, as the Judge assigned to the earliest filed case, I find that the cases ARE RELATED as defined by Civil L.R. 3-12. Accordingly, the Clerk of Court is ordered to reassign the later-filed action to the undersigned. Counsel are instructed that all future filings are to bear the initials PSG immediately after the case number. All case management dates and events presently scheduled in the reassigned case are vacated.

Defendant's response to plaintiffs' complaint in CV 11-05678 HRL shall be due within thirty days of the filing of the Court's order on defendant's motion to dismiss in CV 11-04344 PSG.

Good cause appearing, it is so ordered.

DATED: 1/2/2012, ~~2011~~



PAUL S. GREWAL
United States District Court Magistrate
Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**ADMINISTRATION MOTIONS TO CONSIDER WHETHER CASES SHOULD BE RELATED
AND TO EXTEND TIME TO RESPOND TO COMPLAINT; SUPPORTING DECLARATION;
[PROPOSED] ORDER**

RANDY CHAPEL v. UNITED STATES DEPARTMENT OF EDUCATION

CV 11-04344 PSG

**CAROL NYE-WILSON; DALE WILSON v. UNITED STATES DEPARTMENT OF
EDUCATION**

CV 11-05678 HRL

to be served this date upon the party(ies) as follows:

√ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

to the parties addressed as follows:

Randy Chapel

PO Box 1050

Boulder Creek, CA 95006

Carol Nye-Wilson

610 West Drive

Boulder Creek, CA 95006

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of December 2011, at San Jose, California.

/s/

Mimi Lam
Legal Assistant